

PT 01-72

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

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| GRUNDY COUNTY AGRICULTURAL |) | | |
| DISTRICT FAIR |) | A.H. Docket # | 99-PT-0054 |
| Applicant |) | Docket # | 99-32-06 |
| |) | | |
| v. |) | Parcel Index # | 02-22-100-001 |
| |) | | |
| THE DEPARTMENT OF REVENUE |) | Barbara S. Rowe | |
| OF THE STATE OF ILLINOIS |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John D. Peacock, Peacock and McFarland, for Grundy County Agricultural District Fair.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois on December 5, 2000, to determine whether or not Grundy County Parcel Index No. 02-22-100-001 qualified for exemption during the 1999-assessment year.

Mr. Frank Welch, President of the Grundy County Agricultural District Fair, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 1999-assessment year; secondly, whether the applicant is an agricultural and horticultural organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 1999-assessment year. After a thorough review of the facts and law presented, it is my recommendation that the application be approved in part and denied in part.

In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Grundy County Parcel Index No. 02-22-100-001 did not qualify in part for a property tax exemption for the 1999-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 12)

2. The applicant acquired the subject parcel by an administrator's deed dated August 29, 1966. The parcel is comprised of 160 acres. Seventy of those acres are farmed and the applicant is not asking for an exemption for that portion. (Dept. Ex. No. 1; Tr. pp. 74-75)

3. Located on the subject parcel are various buildings including a secretary's office, a commercial building, a grandstand tickets and concession area, the grandstand, a dressing room trailer, a toilet building, an exhibition hall, a cattle barn, a sheep barn, a hog/horse barn, a horse/goat barn, the rabbits and poultry area with a show ring extension, a dining hall/shop area, a race track, the area for the truck/tractor pull, the pit area, a fine arts/horticulture building, and handicapped facilities and showers area. (Dept. Ex. No. 1)

4. The Grundy County Agricultural Fair has been operated since either 1903 or 1904. Prior to the purchase of the subject parcel, the applicant owned another piece of property in Mazon, Illinois, where the fair was held. I take administrative notice of the Orders of the Honorable Leonard Hoffman in Grundy County case Nos. 3854-A and 3897 entered May 11, 1955, and October 8, 1955, respectively. The judge found that the equities were with the fair association and decreed that the land owned by the applicant and used for its fair was exempt from taxation for 1952, 1953, and 1954. (Dept. Ex. No. 1)

5. On May 2, 1973, the Department granted the applicant an exemption for 20 acres of the subject parcel pursuant to Docket No. 72-457. On July 28, 1981, the Department granted the applicant an exemption for 74.5 additional acres of the subject parcel pursuant to Docket No. 8132-1. (Dept. Ex. No. 1; Tr. pp. 70-71)

6. On February 24, 1999, the Department received the application for exemption

from the Grundy County Board of Review for Grundy County Parcel Index No. 02-22-100-001. The applicant had filed the application stating that the "dimensions or acreage of the land parcel is 90 acres+/-". The board of review had recommended granting a full year exemption of the parcel. On September 10, 1999, the Department denied in part the requested exemption. In particular, the Department determined that Parcel Index No. 02-22-100-001 is exempt from taxation for the 1999-assessment year "except for the commercial building, grandstand, grandstand ticket office and concession building, exhibition hall, hog/horse barn, horse/goat barn, rabbit and poultry building, the dining hall/shop building, a proportionate amount of land, and that area used as parking is taxable as the property is not in exempt use"¹. The applicant timely protested the partial denial. (Dept. Ex. No. 1)

7. The annual Grundy County Agricultural District Fair was held on the subject property from June 30, 1999 through July 4, 1999. The applicant does not charge a gate admission for the fair. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. p. 41)

8. The Grundy County 4-H fair took place on the subject property on July 25, 1999 through July 27, 1999. The applicant does not charge the 4-H for the use of its property. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. p. 24)

9. The applicant entered into a number of leases for the use of areas of the subject property in 1999. The Grundy County consignment sale took place in the commercial building, midway area, and parking lot for a two-week period in February and March. The sale managers paid the applicant \$1,000.00 for the use of the property. The sale itself lasted one day where used farm equipment was sold. Farmers from all over the Midwest bring in farm equipment to be sold at auction. The consignment sale is arranged to make a profit for its three organizers. The applicant is not an organizer of the event. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. pp.

¹ The applicant in its post-hearing brief states that the Department in its tax exemption certificate dated September 10, 1999, erred when it "apparently granted a tax exemption for the 70+/- of farmland and excluded from the tax exemption the 90 acres+/- of the property used by the FAIR for agricultural or horticultural purposes." (Applicant's brief p. 4) When the applicant filled out the exemption application it only listed 90+/- acres as the dimensions of this land parcel. The applicant should have listed that acreage as 160 acres as that is the acreage of this parcel. The exemption denial issued by the Department should have also included the 70 additional acres that are farmed and are part of this Parcel Index Number, and which this applicant concedes is not exempt.

43, 51-56)

10. The applicant entered into a commercial lease agreement with Sandwich Antiques in 1999 for \$600 per day for the use of the commercial building, midway area, and parking lot. The dates of the antique auction/exposition/flea market in 1999 were April 18th, May 23rd, June 13th, July 11th, August 15th, and October 17th. Sellers attending the flea market set up items for sale on card tables. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. pp. 58-60)

11. Kendall/Grundy Farm Credit Service held its annual meeting on June 24, 1999, at the fairgrounds and reserved that right with an oral lease for \$600.00 rent. The Farm Credit Service used the exhibition hall, concession area, and parking lot for a large barbecue for its customers. The organization sells seed corn. (Dept. Ex. No. 1; Tr. pp. 42-43)

12. The McComb Horse and tack sale took place on March 29, 1999. There was no written lease, but the applicant charged \$600.00 for rent. The commercial building, the hog/horse barn, the horse/goat barn, the rabbits and poultry building, and parking lot were used for the event. The sale is an auction of horses, bridles, saddles, harnesses, and other horse paraphernalia. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. pp. 52, 56-57)

13. The Stone City Dog Show took place on the property on May 30, 1999. The applicant entered into an oral lease for \$1,000.00 for the event. The dog show used the commercial building, exhibition hall, rabbit and poultry building, the midway area, and the parking lot. The Stone City AKC Dog show took place on October 3, 1999. An oral lease for \$1,000.00 was entered into between the applicant and lessee. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. pp. 60, 67)

14. United Midget Auto racing took place on the property in 1999 on June 5th, June 12th, June 19th, July 10th, July 17th, August 7th, August 14th, and August 21st. The organizers of the event charge spectators that attend the race. The rent paid to the applicant for each day's event was \$500.00. The arrangements were made by an oral lease. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. pp. 61-62, 64-65)

15. During the summer of 1999, the applicant conducted automobile races each week

(weather permitting) on the subject property. The proceeds from the races were used for the betterment of the grounds. (Applicant's Ex. No. 1)

16. Kendall Grundy Farm Supply held its annual farmer get-together on the subject parcel on July 24, 1999. The applicant charged rent of \$600.00 for the use of the property. The event is a pork-chop dinner that the co-operative members attend. Seed corn and fertilizer are also sold at the event. (Dept. Ex. No. 1; Tr. pp. 42-43, 65-66)

17. The midway area and parking lot were used for the Whispering Pines R.V. Show that took place on October 22nd, 23rd, and 24th on the subject parcel in 1999. The applicant received \$2,000.00 rent for the event. Whispering Pines is an R.V. dealership and the purpose of the show is to sell vehicles. (Dept. Ex. No. 1; Tr. pp. 68-70)

18. In addition, various rent-free events were held on the property. All users of the subject property are required to furnish the applicant with a certificate of insurance. On January 16, 1999, the 4-H held its tattooing of farm animals; on May 16, 1999, the Twin 50 stock Car and Truck race (a fair promotion event) was held; on June 26, 1999, 4-H farm animals were weighed in²; on September 25, 1999, the Grundy County Corn Festival Annual Flea Market was held³; and on October 6, 1999, the Kiwanis sponsored the circus⁴. Other groups also used the property rent-free. Those groups include the Morris Chapter of the Future Farmers of America, the Illinois Valley Sheltered Workshop, (held 6-8 cookouts and games plus a picnic in 1999); the Grundy County Corn Festival Carnival; Illinois State Hay Testing; and the Illinois National Guard (as a rest stop). The American Legion also operated its beer stand on the premises. (Dept. Ex. No. 1; Applicant's Ex. No. 1; Tr. pp. 39-41, 62-63)

19. The 4-H uses the property for other events besides its fair and the days used for animal weighing and tattooing. The distribution of 4-H rate-of-gain steers takes place in December. Approximately twelve 4-H dog obedience classes are held during the summer

² The weighing in is actually an extension of the tattooing of the animals. (Tr. p. 63)

³ The flea market is sponsored by the Kiwanis Club in conjunction with the Corn Festival that has been held in Morris for almost 50 years. (Tr. pp. 66-67)

⁴ The circus takes place in the parking lot only. (Tr. p. 68) The Kiwanis sells tickets for merchants to give away. (Tr. p. 80)

months. (Dept. Ex. No. 1; Tr. p. 26)

20. The applicant charges profit-making companies a rental fee for the use of its property. The applicant furnishes electricity, water, and garbage pick-up. Those rental fees are used by the applicant for upkeep, maintenance, improvements, and expenses of the fair. There is no rent charged to any non-profit organization that uses the fair grounds. (Dept. Ex. No. 1; Tr. pp. 25, 42-45)

21. The applicant does not have an outside gate to charge for access to the annual Grundy County Agricultural District Fair. The monies it receives from "rents, the automobile racing, and so forth" subsidize the fair. The applicant paid almost \$109,000.00 in premiums for exhibits at the fair held June 30, 1999 through July 4, 1999. The State of Illinois Agriculture Department reimburses the applicant for 50% of the agricultural premiums paid. The applicant lost approximately \$42,000.00 in 1999 on the fair. (Dept. Ex. No. 1; Tr. pp. 41, 76-78)

22. The financial statement of the applicant that is submitted to the Illinois Department of Agriculture shows rental from grounds, buildings, and promotions (except during fair) of \$19,500.00. (Dept. Ex. No. 1)

23. In 1999, the applicant also allowed people transporting horses the use of its barns and water for no charge. (Tr. p. 34)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the General Assembly has enacted

property tax exemptions. Concerning agricultural and horticultural societies for the 1999-assessment year, 35 **ILCS** 200/15-85 provides:

All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit, is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Based upon the Administrator's Deed executed on August 29, 1966, I conclude that the applicant owned the parcel here in issue and the improvements thereon during the entire 1999-assessment year. The Illinois Attorney General⁵ on August 31, 1949, opined that the Sandwich Fair Association, a corporation organized not for pecuniary profit and having for its object and purpose the advancement of agricultural, horticultural and floricultural interests, by holding agricultural fairs, came within the exemption for agricultural and horticultural organizations. Op. Att'y Gen. (Ill.) 58 (1949)

In 1955, the Honorable Judge Hoffman of the Grundy County Circuit Court made an determination, based upon equitable principles, that the applicant was entitled to an exemption for another piece of property used for the applicant's fair and secondary uses. In addition, the Department in 1972 and 1981 granted an exemption to the applicant for the subject property. However, since 1994, not only has the statutory language changed regarding the agricultural and

⁵ The Attorney General opinion does not address the "not used with a view to profit" language currently in the statute and does not address the use of the property except in relation to pecuniary profit. Therefore, the only determination relevant from the opinion is that a fair association may be an agricultural and horticultural organization.

horticultural exemption, but a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years. Therefore, the decision that property was taxable in certain years is not *res judicata* as to the status of property during later years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). I therefore find that the prior determinations regarding this applicant and this parcel are not relevant to the question of whether this parcel is entitled to a property tax exemption for the 1999-assessment year.

During 1999, other than the applicant's fair period and the 4-H fair days, the applicant allowed other groups and organizations to use the subject parcel. The applicant admits that it covers the costs associated with its fair by charging rents and other fees for activities such as automobile racing. The leasing of the commercial building, grandstand, grandstand ticket office and concession building, exhibition hall, hog/horse barn, horse/goat barn, rabbit and poultry building, the dining hall/shop building, a proportionate amount of land, and that area used as parking by the various for-profit groups is not using the property for agricultural or horticultural purposes as required by the statute. In 1999 the applicant earned at least \$19,500.00 by renting its property.

The applicant cites to the case of In re: Guilford Hope Grange No. 6, 52 Ill.App.3d 718 (2nd Dist. 1977) in which the court held that the property owner was an agricultural society that used its property for meetings, activities, and 4-H clubs. The property owner would serve dinner periodically and use the revenues earned to pay insurance, utilities, taxes and other operating expenses. The applicant asserts that In re Guilford is almost directly on point with the facts in this case. (Applicant's brief p. 5)

The agricultural and horticultural exemption contained in the Revenue Act of 1939, in force for consideration in In re Guilford, and until January 1, 1994, exempted certain property as follows:

All property which may be used exclusively by societies for agricultural, horticultural, mechanical or philosophical purposes, and not used for pecuniary profit.

As the applicant correctly states, the Guilford court held that the property owner was an agricultural society that did not use the property for "pecuniary profit". The court relied upon the Illinois Supreme Court's definition of "pecuniary profit" found in People ex rel. Hughes v. Universal Service Association, 365 Ill. 542 (1937) to mean profit for stockholders or members. The court found that the Grange qualified for an exemption under that language.

Applicant's reliance on In re Guilford is misplaced. The language of the pertinent exemption, as it exists today in the property tax code, is quite different than the earlier language in the Revenue Act of 1939.

The agricultural and horticultural exemption contained in the Property Tax Code, which became effective on January 1, 1994, and which during the 1999-assessment year was found at 35 **ILCS** 200/15-85 states as follows:

All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit, is exempt.

The provision "not for pecuniary profit" which appeared in the Revenue Act of 1939 has changed to "not used with a view to profit". Illinois courts, in interpreting the phrase "not used with a view to profit" have established a broader reading of that phrase than the narrow analysis taken of the "pecuniary profit" phrase that limited consideration of profit to stockholders or members.

The exemption for charitable organizations found in the Code at 35 **ILCS** 200/15-65 also contains the provision "and not leased or otherwise used with a view to profit". This language is exactly the same as the language in the charitable exemption in the Revenue Act of 1939, which preceded it. Illinois Courts, interpreting the "and not leased or otherwise used with a view to

profit" language have consistently held that the use of property to produce income is not a charitable use. This is true even if the income is used for charitable purposes or the organization seeking the exemption operated at a loss in spite of the receipt of other income. *See People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136 (1924) (Illinois Supreme Court determined that a farm owned by an old people's home that was rented for part cash and part crop rent, all of which was paid to the treasurer of the home, did not qualify for exemption, even though the income from all the property was insufficient to pay the expenses of conducting the home); *See also The Salvation Army v. Department of Revenue*, 170 Ill.App.3d 336 (2nd Dist. 1988), *leave to appeal denied*, 122 Ill.2d 594 (1988) (court held that the thrift store with the primary purpose of generating income to fund the charitable rehabilitation program of the Salvation Army did not qualify for the charitable use exemption).

It therefore cannot be said that applicant's leasing of the subject areas of its property are leases by a society for agricultural purposes; rather, they are leases with a view to profit. The primary reason for the leasing of the property is to generate income.

The statute also requires that during the tax year, the property must be used primarily for exempt purposes, in this case for agricultural or horticultural purposes. However, it cannot be said that applicant's use of the property at issue was primarily, and not incidentally, for these exempt purposes. The applicant held its fair for five days to a week at the most in 1999 and the 4-H fair lasted three days. The applicant leased areas of the subject property on at least 44 days. Although the applicant allowed not-for-profit groups to use portions of its property at least eighteen times, without charging rent, it cannot be concluded that those uses were for horticultural and agricultural purposes. Therefore, I conclude that the primary use of this property was not for horticultural and agricultural purposes.

I therefore recommend that the commercial building, grandstand, grandstand ticket office and concession building, exhibition hall, hog/horse barn, horse/goat barn, rabbit and poultry building, the dining hall/shop building, a proportionate amount of land, and that area used as parking, as well as the 70 acres leased for farming, remain on the Grundy County tax rolls for the

1999-assessment year and be assessed to the applicant, the Grundy County Agricultural District Fair, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
November 13, 2001